

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WAYNE**

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**DOUGLAS BUSCH,****Plaintiff(s),****-against-****EPISCOPAL DIOCESE OF ROCHESTER and ST.  
MARK'S EPISCOPAL CHURCH,****Defendant(s).**

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**X****SUMMONS****Plaintiff(s) designate  
WAYNE County as the place of  
trial.****The basis of the venue is  
Defendant's address****Plaintiff(s) reside at  
O. C. S.  
3045 County Complex Drive  
Canadaigua, NY 14424****X****Index No.:  
Date Summons &  
Complaint Filed:****To the above named Defendant(s)**

**You are hereby summoned** to answer the complaint in this action, and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorney(s) within twenty days after the services of this summons exclusive of the day of service, where service is made by delivery upon you personally within the state, or within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Port Washington, NY  
September 6, 2019



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Brett A. Zekowski  
**Parker Waichman LLP**  
*Office & Post Office Address:*  
6 Harbor Park Drive  
Port Washington, NY 11050  
(516) 466-6500  
Our File # 9006016

TO: Episcopal Diocese of Rochester  
3825 E. Henrietta Road, Suite 100  
Henrietta, NY 14467

St. Mark's Episcopal Church  
400 So. Main Street  
Newark, NY 14513

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WAYNE

DOUGLAS BUSCH,

**VERIFIED COMPLAINT**

Plaintiff(s),

Index No.:  
Jury Trial Demanded

-against-

EPISCOPAL DIOCESE OF ROCHESTER and  
ST. MARK'S EPISCOPAL CHURCH,

Defendant(s).

X

Plaintiff, Douglas Busch, by his attorneys, Parker Waichman LLP, complaining of the defendants, respectfully alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

1. At the time of the commencement of ther action plaintiff, Douglas Busch, was a resident of the County of Ontario, State of New York.
2. At the time of the incident(s) giving rise to ther complaint, plaintiff was a resident of the County of Wayne, State of New York.
3. Ther action is timely pursuant to CPLR 214-g.
4. At all times herein mentioned, defendant, Episcopal Diocese of Rochester, was a religious corporation organized pursuant to the Religious Corporations Law, with its principal office at 3825 E. Henrietta Road, Suite 100, Henrietta, County of Monroe, State of New York.
5. At all times herein mentioned, defendant, St. Mark's Episcopal Church, was a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 400 So. Main Street, Newark, County of Wayne, State of New York.
6. At all times herein mentioned, St. Mark's Episcopal Church was a Church or parish

within and under the authority of defendant, Episcopal Diocese of Rochester.

7. At all times herein mentioned, defendant, Episcopal Diocese of Rochester, oversaw, managed, controlled, directed and operated defendant, St. Mark's Episcopal Church.

8. At all times herein mentioned, Episcopal Diocese of Rochester, managed, supervised and controlled those who were employed or otherwise worked for defendant, St. Mark's Episcopal Church, including, but not limited to priests, ministers, nuns and other personnel and volunteers, both while they were on premises and engaged in off-premises activities related to their employment with defendant, St. Mark's Episcopal Church.

9. From on or about January 1, 1975 through on or about December 31, 1977, plaintiff, an infant, attended St. Mark's Episcopal Church.

10. From on or about January 1, 1975 through on or about December 31, 1977, plaintiff was a parishioner of defendant, St. Mark's Episcopal Church.

11. At all times herein mentioned and relevant to the allegations set forth herein Minister James E. Putnam, was a minister assigned as minister by defendant, Episcopal Diocese of Rochester to defendant, St. Mark's Episcopal Church.

12. At all times herein mentioned and relevant to the allegations set forth herein, Minister James E. Putnam, was a minister at defendant, St. Mary's Episcopal Church.

13. At all times herein mentioned, Minister James E. Putnam, was employed by defendant, Episcopal Diocese of Rochester.

14. At all times herein mentioned, Minister James E. Putnam, was employed by the defendant St. Mark's Episcopal Church.

15. Through his position with defendant, Episcopal Diocese of Rochester, Minister James E. Putnam, was put in direct contact with plaintiff, Douglas Busch, then an infant.

16. Through his position with defendant, St. Mark's Episcopal Church, Minister James,

E. Putnam, was put in direct contact with plaintiff, Douglas Busch, then an infant.

17. That on or about January 1, 1975 through December 31, 1977, the Minister James E. Putnam, sexually abused the plaintiff.

18. At all times herein mentioned, James E. Putnam, was under the management, supervision, employ, direction and/or control of defendant, Episcopal Diocese of Rochester.

19. At all times herein mentioned, James E. Putnam, was under the management, supervision, employ, direction and/or control of defendant, St. Mark's Episcopal Church.

20. Defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, knew and/or reasonably should have known and/or knowingly condoned and/or covered up, the inappropriate and unlawful sexual activities of Minister James E. Putnam, who sexually abused the plaintiff, Douglas Busch while plaintiff, Douglas Busch, was an infant.

21. Defendant, Episcopal Diocese of Rochester, had the responsibility to manage, supervise, control and/or direct priests and ministers assigned to defendant, St. Mark's Episcopal Church.

22. At all relevant times, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, had a duty not to aid pedophiles such as Minister James E. Putnam, by assigning, maintaining and/or appointing him to positions in which he would have access to minors.

23. At all relevant times, Minister James E. Putnam, used his position as a priest and/or minister to entice, take control of plaintiff, Douglas Busch, and sexually assault, sexually abuse or have sexual contact with plaintiff, Douglas Busch while plaintiff was a minor.

24. Defendants, individually, jointly and/or severally, violated various New York statutes, including, but not limited to N.Y. Soc. Serv. Law §§413 and 420, which require school officials and teachers to report suspected cases of child abuse and impose liability for failure to report.

25. Plaintiff suffered physical and psychological injuries and damages as a result of his childhood sexual abuse by defendant, Minister James E. Putnam.

26. As a direct result of defendants' conduct, plaintiff suffered and will continue to suffer great pain of body and mind, severe and permanent emotional distress and physical manifestations of emotional distress. As a result of her childhood sexual abuse, plaintiff has been prevented from obtaining the full enjoyment of life, has incurred and will continue to incur expenses for medical and psychological treatment, therapy and counseling and has incurred and will continue to incur loss of income and/or loss of earning capacity.

27. Because of his childhood sexual abuse, plaintiff, Douglas Busch, is unable to fully describe all of the details of that abuse and the extent of the harm that she suffered as a result.

**AS AND FOR A FIRST CAUSE OF ACTION  
NEGLIGENT HIRING, RETENTION, SUPERVISION AND/OR DIRECTION**

28. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

29. The sexual abuse of children by adults, including priests, ministers and teachers, is foreseeable.

30. Defendant, Episcopal Diocese of Rochester, at all relevant times represented and held out to the public defendant, St. Mark's Episcopal Church, to be a safe place for learning and participating in youth activities.

31. At all relevant times, defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, were each under an express and/or implied duty to protect and care for plaintiff, Douglas Busch.

32. Defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, negligently hired, retained, directed and supervised Minister James E. Putnam, because they knew

or should have known that Minister James E. Putnam, posed a threat of sexual abuse of children such as plaintiff.

33. Defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, knew or should have known that James E. Putnam, had a propensity to engage in the conduct which caused plaintiff's injuries prior to or about the time of the occurrence of these injuries.

34. Defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, owed a duty of care to all minors, including plaintiff, who were likely to come under the influence or supervision of Minister James E. Putnam, in their role as teacher, priest, minister, counselor, trustee, director, officer, employee, agent, servant and/or volunteer to ensure that Minister James E. Putnam, did not use their assigned positions to injure minors by sexual assault, sexual abuse or sexual contact with minors.

35. Minister James E. Putnam, sexually assaulted, sexually abused and/or had sexual contact with plaintiff, Douglas Busch, on defendants' premises, including St. Mary's Episcopal Church, 400 So. Main Street, Newark, NY.

36. Defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, were put on notice of Minister James E. Putnam's improper and inappropriate actions toward minors.

37. Defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, were negligent in failing to properly supervise Minister James E. Putnam.

38. Defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, were negligent in failing to properly manage Minister James E. Putnam.

39. Defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, were negligent in failing to properly control Minister James E. Putnam.

40. At all relevant times, defendants, Episcopal Diocese of Rochester and St. Mark's

Episcopal Church, were willful, wanton, malicious, reckless and/or outrageous in their disregard for the rights and safety of plaintiff.

41. As a direct and proximate result of defendants' above described omissions, plaintiff has suffered and will continue to suffer the injuries described herein.

42. By reason of the foregoing, the defendants are liable to plaintiff jointly, severally and/or in the alternative, for compensatory damages and punitive damages, together with costs and interest in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A SECOND CAUSE OF ACTION  
NEGLIGENCE/GROSS NEGLIGENCE**

43. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 42 as if fully set forth herein.

44. Defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, knew or negligently failed to know that Minister James E. Putnam, posed a threat of sexual abuse to children.

45. The acts of Minister James E. Putnam, as described above, was undertaken, enabled by, and/or during the course of their respective employment, assignment, appointment and/or agency with defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church.

46. Defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church:

- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons in work involving risk of harm to others;
- b. failed to adequately supervise the activities of Minister James E. Putnam.
- c. failed to adequately supervise and safeguard minors attending defendant, St. Mark's Episcopal Church;

- d. permitted and/or intentionally failed and/or neglected to prevent negligent or tortious conduct by persons, whether or not their servants, agents or employees, upon premises under their control; and
- e. allowed the acts of omission and/or commission of any or all of the allegations set forth in this Complaint to occur.

47. At all relevant times Minister James E. Putnam, was under the supervision, employ, direction and/or control of defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church.

48. At all relevant times, defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, were wanton, willful, malicious, reckless and outrageous in their disregard for the rights and safety of plaintiff, which conduct was equivalent to criminal conduct.

49. As a direct and/or indirect result of said conduct, plaintiff has suffered injuries and damages as described herein.

50. By reason of the foregoing, defendants jointly, severally and/or in the alternative are liable to plaintiff for compensatory damages and for punitive damages, together with interest and costs in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

### **THIRD CAUSE OF ACTION BREACH OF FIDUCIARY DUTY**

51. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 50 as if fully set forth herein.

52. At all relevant times, there existed a fiduciary relationship of trust, confidence, and reliance between plaintiff, on the one hand. and defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, on the other, based upon the entrustment of plaintiff, while he was

a minor child, to the care and supervision of the defendants and each of them, as a parishioner, worshiper, invitee, attendee or guest at defendant, St. Mark's Episcopal Church. The entrustment of the plaintiff to the care and supervision of the defendants and each of them, while plaintiff was a minor child, required the defendants to assume a fiduciary role and to act in the best interests of the plaintiff and to protect him while he was a minor and vulnerable child.

53. Pursuant to their fiduciary relationship with plaintiff, defendants were entrusted with the well-being, care and safety of plaintiff.

54. Pursuant to their fiduciary relationship with plaintiff, defendants assumed a duty to act in the best interests of plaintiff.

55. Defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, breached their fiduciary duties to plaintiff.

56. At all relevant times, the actions and/or inactions of defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, were willful, malicious, wanton, reckless and outrageous in their disregard for the rights and safety of plaintiff.

57. As a direct result of defendants' conduct, plaintiff has suffered injuries and damages described herein.

58. By reason of the foregoing, defendants, jointly, severally and/or in the alternative are liable to plaintiff for compensatory damages and for punitive damages, together with interest and costs in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

#### **FOURTH CAUSE OF ACTION BREACH OF NON-DELEGABLE DUTY**

59. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1

through 58 as of fully set forth herein.

60. When he was a minor, plaintiff, Douglas Busch, was placed in the care of defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, for the purposes of providing plaintiff with a safe environment in which to participate in youth activities and receive an education. There was thus created a non-delegable duty of trust between plaintiff and defendants.

61. Plaintiff, Douglas Busch was a vulnerable child when placed in the care of defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church.

62. Defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, and each of them, were in the best position to prevent plaintiff from being abused and/or to have learned of the repeated abuse by Minister James E. Putnam, and to have stopped it.

63. As evidenced by the fact that plaintiff, Douglas Busch, was sexually abused as a minor child entrusted to the care of the defendants, these defendants breached their non-delegable duty to plaintiff.

64. At all relevant times, Minister James E. Putnam, was under the supervision, employment, direction and/or control of defendants Episcopal Diocese of Rochester and St. Mark's Episcopal Church.

65. As a result of the sexually abusive conduct of Minister James E. Putnam, plaintiff, Douglas Busch, suffered the injuries and damages described herein, the full extent of which is unknown at present.

66. By reason of the foregoing, defendants jointly, severally and/or in the alternative are liable to plaintiff for compensatory damages and for punitive damages, together with interest and costs in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**FIFTH CAUSE OF ACTION**  
**NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS**

67. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 66 above as if set forth at length herein.

68. As described above, defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, acted in a negligent and/or grossly negligent manner.

69. The actions of defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, endangered plaintiff's safety and caused him to fear for her own safety.

70. As a direct and proximate result of the actions of defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, which included, but were not limited to, negligent and/or grossly negligent conduct, plaintiff suffered severe injuries and damages as described herein, including, but not limited to, mental and emotional distress.

71. By reason of the foregoing, defendants, jointly, severally and/or in the alternative are liable to plaintiff for compensatory damages and for punitive damages, together with costs and interest in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**SIXTH CAUSE OF ACTION**  
**BREACH OF DUTY *IN LOCO PARENTIS***

72. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 71 as if set forth at length herein.

73. While he was a minor, plaintiff was entrusted by his parents to the control of the defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, for the purposes of providing plaintiff with an education and allowing him to participate in youth activities sponsored by defendants. During the times that plaintiff was at school and during the times that he

participated in youth activities, he was under the supervision and control of defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church. These defendants, and each of them, at all relevant times and now, owed and owe a duty to children entrusted their care to act *in loco parentis* and to prevent foreseeable injuries.

**SEVENTH CAUSE OF ACTION**  
**BREACH OF STATUTORY DUTY PURSUANT TO NEW YORK**  
**SOCIAL SERVICES LAW §§ 413, 420 TO REPORT ABUSE**

74. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 73 as if fully set forth herein.

75. Pursuant to N.Y. Social Services Law §§413, 420, defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, had a statutory duty to report the reasonable suspicion of abuse of children in their care.

76. Defendants, Episcopal Diocese of Rochester and St. Mark's Episcopal Church, breached that duty by knowingly and willfully failing to report reasonable suspicion of abuse by Minister James. E. Putnam.

77. As a direct and/or indirect result of said conduct, plaintiff has suffered injuries and damages as described above.

78. By reason of the foregoing, defendants jointly, severally and/or in the alternative are liable to plaintiff for compensatory damages and punitive damages, together with costs and interest in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

79. By repeatedly sexually assaulting, sexually abusing and/or having sexual contact with plaintiff, Minister James E. Putnam, placed plaintiff in imminent and reasonable apprehension of harmful and offensive contact.

80. By repeatedly sexually assaulting, sexually abusing and/or having sexual contact

with plaintiff, defendants Minister James E. Putnam, acted so as to cause repeated

**WHEREFORE**, plaintiff demands judgment against defendants on each cause of action as follows:

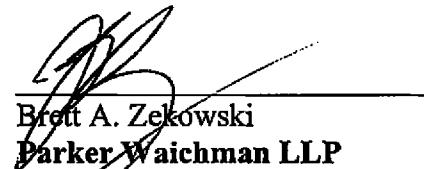
- A. Awarding compensatory damages in an amount to be proven at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding prejudgment interest to the extent permitted by law;
- D. Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law;
- E. Awarding such other and further relief as to this Court may seem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

Dated: Port Washington, New York  
September 6, 2019

Yours, etc.

  
Brett A. Zekowski  
**Parker Waichman LLP**  
*Attorneys for Plaintiff(s)*  
*Office & Post Office Address*  
6 Harbor Park Drive  
Port Washington, NY 11050  
516-466-6500  
Our File # 9006016

ATTORNEY'S VERIFICATION

STATE OF NEW YORK )  
: ss :  
COUNTY OF NASSAU )

Brett A. Zekowski, an attorney and counselor at law, duly admitted to practice in the Courts of the State of New York, affirms the following to be true under penalties of perjury:

I am an associate of the firm **Parker Waichman LLP** attorneys for the plaintiff(s) herein.

I have read the foregoing Complaint and know the contents thereof. Upon information and belief, I believe the matters alleged therein to be true.

The source of your deponent's information and the grounds of my belief are communications, papers, reports and investigations contained in my file.

The reason this verification is made by deponent and not by plaintiff(s) is that plaintiff(s) reside in a county other than the one in which your deponent's office is maintained.

Dated: Port Washington, NY  
September 6, 2019



Brett A. Zekowski

Index No. NO. 1

RECEIVED NYSCEF: 09/11/2019

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WAYNE

DOUGLAS BUSCH,

Plaintiff(s),

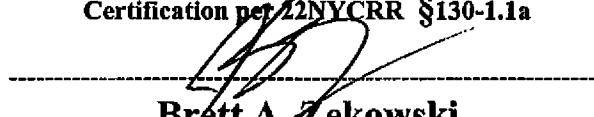
-against-

EPISCOPAL DIOCESE OF ROCHESTER and ST. MARK'S EPISCOPAL CHURCH,

Defendant(s).

## SUMMONS AND VERIFIED COMPLAINT

Certification per 22NYCRR §130-1.1a



Brett A. Zekowski  
Parker Waichman LLP  
*Attorneys for Plaintiff(s)*  
6 Harbor Park Drive  
Port Washington, NY 11050  
(516) 466-6500

To:

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated:

.....

Attorney(s) for

## PLEASE TAKE NOTICE

## NOTICE OF

ENTRY that the within is a (certified) true copy of a entered in the office of the Clerk of the within named  
Court on 2019.NOTICE that an Order of which the within is a true copy will be presented to the Hon. , one of the  
OF  
SETTLEMENT judges of the within named Court, at ,  
, on  
20 , at M.

Dated:

Parker Waichman LLP  
*Attorneys for Plaintiff(s)*

TO: